

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

IN RE:

RANDALL BAXTER KNIGHT,

Debtor.

BARBARA F. KNIGHT,

Plaintiff,

vs.

RANDALL BAXTER KNIGHT,

Defendant.

Bankruptcy No. 97-3317<sup>3</sup>  
(Chapter 7)

Adversary No. 98-3136

ORDER

This adversary complaint was filed on October 8, 1998 to determine the dischargeability of certain debts under 11 U.S.C. § 523(a)(5). Plaintiff Barbara Knight filed a Motion for Summary Judgment on November 12, 1998. Defendant Randall Knight filed a cross motion on December 9, 1998. Both were heard on January 14, 1999.

FACTS

Barbara Knight filed a state court domestic case against her then husband Randall Knight in 1989. During their divorce proceeding, the parties entered into a settlement agreement which was integrated into a Memorandum of Judgment and Order entered by Judge Bissell of the Mecklenburg County District Court on September

21, 1993 ("Bissell order").<sup>1</sup> Under the Bissell order, Randall Knight was required to make a variety of payments to Barbara Knight. Some of the payments were designated as child support, alimony, and a variety of children's expenses. Relevant to this action, Randall Knight was required to pay a distributive award to Barbara Knight in the amount of \$200,000.00, payable as \$13,333.33 per year for fifteen years. The distributive award was subject to increase based upon the performance of Randall Knight's business, Knight Communications, Inc.

Randall Knight failed to pay as required under the Bissell order, and the state court held him in contempt in 1993. However, this citation did not resolve the parties' problems. By 1997, contempt motions were again pending in state court. In addition to the 1997 contempt motions, Randall Knight asked the state court to reduce his obligations under the Bissell order.

The state court heard these disputes during the Spring of 1997. In June, 1997, the presiding Judge, the Honorable Jane Harper, met with counsel and outlined her decision. According to the parties, Judge Harper announced an intention to enter an order reducing Randall Knight's child support obligations, but also finding him in contempt for his failure to comply with the Bissell order. Judge Harper's chambers ruling ordered Randall Knight to comply with the provisions of the Bissell order, to pay \$15,000.00 of Barbara Knight's attorney's fees and to catch up any arrears

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<sup>1</sup> Knight v. Knight, No. 89-CVD-10578-MB (N.C. Dist. Ct. Mecklenburg Co. Sept. 21, 1993)

owed under the Bissell order.

Unfortunately, this decision had not been reduced to writing when, on December 29, 1997, Randall Knight filed a Chapter 11 bankruptcy case with this court. Barbara Knight then asked this court, Chief Bankruptcy Judge George R. Hodges presiding, to abstain from hearing the domestic issues, and to grant relief from stay so that the written order memorializing Judge Harper's ruling could be entered. By order dated March 23, 1998, Judge Hodges modified the stay to permit entry of the domestic order and to allow enforcement of the alimony and child support portions of the Bissell order. Relief from stay was limited to these matters. Determination of the nature of the settlement and the equitable distribution issues were expressly reserved for future decision by the Bankruptcy Court. On April 1, 1998, Judge Harper entered the order memorializing the earlier chambers ruling("Harper order").<sup>2</sup> To clarify that this was a pre-bankruptcy ruling, Judge Harper entered her order *Nunc pro tunc* to June 19, 1997.

Randall Knight subsequently converted his bankruptcy case to Chapter 13, and after efforts to confirm a plan failed, his case was converted to Chapter 7.

On October 8, 1998, Barbara Knight filed an adversary proceeding seeking to have the \$200,000.00 distributive award from the Bissell Order and the \$15,000.00 attorney's fee award from the Harper Order declared nondischargeable under 11 U.S.C. § 523(a)(5).

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<sup>2</sup> Knight v. Knight, No. 89-CVD-10578-MB (N.C. Dist. Ct. Mecklenburg Co. April 1, 1998).

Randall Knight has objected, arguing that these two obligations are not in the nature of alimony, maintenance or support, but are dischargeable property settlement obligations.<sup>3</sup>

#### **LEGAL DISCUSSION**

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment motions and is made applicable to bankruptcy proceedings by Rule 7056 of the Bankruptcy Rules. Under Rule 56(c), summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.Pro. 56(c).

Barbara Knight's summary judgment motion is based on two legal arguments. First, she contends that the two state court orders have already established that Randall Knight's domestic obligations are nondischargeable in bankruptcy. Second, she argues that the settlement agreement, having been adopted in an integrated, non-modifiable order, may not be altered and therefore it may not be discharged. Randall Knight, on the other hand, argues that such pre-petition determinations of dischargeability are against public policy and are invalid.

#### **The Pre-petition Settlement Agreement/Orders Are Not Determinative of Dischargeability**

In their settlement, the Knights agreed that Randall Knight's

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<sup>3</sup> Plaintiff has not contended that these obligations would not be dischargeable as property settlements under 11 U.S.C. § 523(a) (15).

obligations would not be dischargeable in bankruptcy. The state court orders incorporate this agreement. Describing the \$200,000.00 distributive award, the Bissell Order states: "This obligation as part and parcel of the overall settlement package shall not be dischargeable by Defendant in bankruptcy." Knight, No. 89-CVD-10578-MB at 4 (Sept. 21, 1993). Likewise, the Harper order concludes the attorney's fees award is part of the alimony and equitable distribution provisions of the settlement agreement and are therefore nondischargeable. Knight, No. 89-CVD-10578-MB (April 1, 1998).

There is a surface appeal to Barbara Knight's argument. Negotiated agreements should be honored, if possible. Comity dictates that the orders of the state courts be respected, if possible. And certainly federal courts should be wary of deciding domestic matters, lest they supplant the state courts as a family law court. Carver v. Carver, 954 F.2d 1573 (11<sup>th</sup> Cir. 1992), cert. denied, 506 U.S. 986, 113 S.Ct. 496, 121 L.Ed.2d 434 (1992).

However, in this case the undersigned must agree with the Debtor. A pre-petition agreement or order characterizing a domestic debt is not determinative of its dischargeability in a subsequent bankruptcy. Carbia v. Clark, 113 B.R. 761, 763 (Bankr. S.D. Fla. 1990). After bankruptcy the issue must be determined under section 523(a)(5), which exempts from discharge any debt owed "...for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record" (hereafter, "AMS debts"). Under section

523(a)(5) the analysis begins with a presumption that discharge is favored, "unless the complaining spouse, who has the burden of proof, demonstrates that the obligation at issue is actually in the nature of alimony, maintenance or support." Tilley v. Jessee, 789 F.2d 1074, 1077 (4<sup>th</sup> Cir. 1986).

Therefore, while the domestic obligations arise under state law, federal law determines whether those debts are dischargeable in bankruptcy. Long v. West, 794 F.2d 928, 930 (4<sup>th</sup> Cir. 1986). For this reason, pre-petition waivers of dischargeability are uniformly held to be unenforceable. Carbia, 113 B.R. at 763; Bisbach v. Bisbach, 36 B.R. 350, 352 (Bankr. W.D. Wis. 1984).

In enacting the Bankruptcy Code, Congress has sought to balance a number of competing policy interests, including the ex-spouse's rights to payment and the debtor's need for a fresh start. This balance is reflected in section 523(a), which makes certain debts nondischargeable. In the case of domestic debts, only those debts in the nature of alimony, support and maintenance,<sup>4</sup> and certain types of property settlement obligations<sup>5</sup> are excluded from this discharge.

In order that such policy choices be effective, pre-petition waivers must be invalid. Otherwise, all creditors would demand such waivers in their contracts. In like fashion, to avoid the inconvenience of bankruptcy, governmental entities and even other

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<sup>4</sup> 11 U.S.C. § 523(a)(5).

<sup>5</sup> 11 U.S.C. § 523(a)(15).

tribunals would be inclined to mandate that their particular proceedings be exempt from the effects of a future bankruptcy filing. As a practical matter, if dischargeability rights can be waived they will not exist.

Moreover, the Harper Order could not determine the dischargeability as Barbara Knight contends, because that issue was not before the state court. Judge Hodge's order modifying the section 362 automatic stay did not extend to the dischargeability issue. As he termed it, the "'global' nature of the domestic settlement terms, concerning equitable distribution, alimony, and child support..." were reserved and stayed, pending further orders of the bankruptcy court. Thus the conclusion in the Harper order that these debts were nondischargeable is without effect.

**Obligations Created in an Integrated, Non-Modifiable Domestic Agreement May Be Discharged in Bankruptcy**

Barbara Knight's second argument is that she and Randall Knight had an integrated "global" agreement, which is non-modifiable. In North Carolina, an integrated domestic agreement means that the parties' settlement agreement has become part of a court order. The effect of an order being integrated is that the "court ordered support payments . . . are not subject to modification." Hayes v. Hayes, 100 N.C. App. 138, 394 S.E.2d 675, 679 (1990).

This argument fails for the reasons stated above. If the debt becomes nondischargeable simply because an agreement is termed "non-modifiable" or "integrated" in an order or settlement, then

section 523(a)(5) is rendered meaningless. A state law would control the federal statute. Under the Supremacy Clause, this cannot be. Dischargeability must be determined under section 523(a). State law concepts such as "integration" and "non-modifiability" are certain factors to be considered in making that determination, but are not dispositive of the issue.

#### **Standard of Applicable Law.**

In this Circuit, whether or not a domestic debt is nondischargeable as an AMS debt turns upon its nature and the shared intent of the parties at the time the domestic debts were created. Tilley, 789 F.2d at 1077. Courts usually employ a multiple factor analysis to deduce nature and intent, considering the titles used in the agreements, Long, 794 F.2d at 930; Catron v. Catron, 164 B.R. 912 (E.D. Va. 1994), whether the obligation is separately classified in the document from other types of debts, Tilley, 789 F.2d at 1077, whether the obligations terminate on remarriage Tilley at 1078, n.3; In re Altavilla, 40 B.R. 938 (Bankr. Mass.1984), whether they are modifiable, and how they are treated by the parties for tax purposes, In re Sternberg, 85 F.3d 1400 (9<sup>th</sup> Cir. 1996). However, when the intent of the parties is so unambiguous that true intent is readily ascertained, it is unnecessary to use a strict factors analysis. Cross v. Cross, 175 B.R. 38, 41 (Bankr. D.N.D. 1994). "Any other rule would effectively turn a bankruptcy court into a court of domestic relations." Id.

In this particular case, the parties appear to both believe that the documents in the record resolve these factual issues.



Neither has suggested material factual disputes in their motions or filed affidavits demonstrating such factual disputes. Therefore, the court will consider their motions on the record presented.

**The Distributive Award is Clearly in the Nature of a Property Settlement, and Not an AMS Debt**

Many of the factors that the Tilley court found to be persuasive evidence of a property settlement are also found in the current case, and pertain to the distributive award. A plain reading of the Bissell order clearly reveals that the Knights' intended that the distributive award be in the nature of a property settlement.

First, it is classified in the Bissell order separately from the sections dealing with alimony. Second, the distributive award payments continue regardless of death or remarriage; in fact, these payments are guaranteed by a life insurance policy on Randall Knight, with Barbara Knight as the named beneficiary. Third, the amount of the payments may not decrease, but are subject to increase based on the performance of Randall Knight's business. Fourth, the payments are not taxable to Barbara Knight and are not deductible from Randall Knight's income taxes, in contradiction to the federal tax treatment of alimony payments. Fifth, the Harper order refers to the \$200,000.00 payment as an "equitable distribution distributive award," which is more suggestive of a property settlement than alimony. Knight at 6 (April 1, 1998).

A final factor also suggests a property settlement. In attempting to protect the distributive award from bankruptcy, the

settlement agreement contained the pre-petition waiver language discussed above. Knight at 4 (Sept. 21, 1993). This language would be superfluous if the parties' shared intent was to treat the distributive award as an AMS payment.

Based on this record, the overall description of the distributive award indicates an intent to make a property settlement, not an AMS debt. The fact that the payments continue despite death or remarriage, in addition to the tax treatment, make the distributive award extremely similar to the debt in Tilley. In that case, the court concluded that the payment was not an AMS debt. Likewise, this Court finds that the \$200,000.00 distributive award is not an AMS debt. It is in the nature of a property settlement, and is dischargeable in bankruptcy. The undersigned grants Randall Knight's motion for summary judgment on this point.

#### **Attorney's Fees**

In contrast to the distributive award, it appears that the attorney's fees awards are in the nature of alimony. The national trend is to view attorney's fees granted as part of litigation seeking to enforce a domestic order as "in the nature of support." Silansky v. Brodsky, Greenblatt & Rehenan, 897 F.2d 743, 744 (4<sup>th</sup> Cir. 1990); In re Peters, 964 F.2d 166 (2d Cir. 1992); In re Miller, 55 F.3d 1487 (10<sup>th</sup> Cir. 1995); In re Josephs, 16 F.3d 86 (5<sup>th</sup> Cir. 1994); In re Kline, 65 F.3d 749 (8<sup>th</sup> Cir. 1995). Some courts have expanded the reasoning to include court costs, even when the creditor/dependent is unsuccessful in winning a support award. In re Grady, 180 B.R. 461 (Bankr. E.D. Va. 1995).

The Harper order found that Randall Knight was in contempt of the Bissell order on four bases: he failed to pay the uninsured medical expenses incurred by his children; he failed to pay alimony as it was due and at the time of the order was in arrears for \$15,900.00; he failed to pay the full \$7000.00 owed to his oldest child's college; and he failed to pay two annual installments of the distributive award and was in arrears for \$26,666.66. Randall Knight was ordered to pay \$15,000.00 of Barbara Knight's attorney's fees, which represented approximately one half of her total attorney's fees.

The contempt proceedings appear to be largely related to enforcing nondischargeable debts. While it may be that some portions of these fees would relate to the distributive award issue, it is unlikely that these could be separated from the fees for enforcing the AMS debts. It is even more doubtful that Barbara Knight's attorney fees would have been less absent this component.

Based upon this record, the undersigned concludes that the attorney's fees awarded Barbara Knight in the state court litigation are in the nature of alimony, maintenance, and support and are not dischargeable. The Court will grant Barbara Knight's Motion on this count.

#### **Effect of Discharge**

Finally, it bears noting that in holding the distributive award to be dischargeable, the undersigned is not ruling that Randall Knight may keep the benefits of his bargain under the Settlement Agreement while shucking his burdens. The undersigned

makes no ruling whether Barbara Knight may be entitled to relief in state court in view of this discharge.

Other courts have held that discharging such obligations may justify relief to the non-filing party. For example, in the Ninth Circuit, it has been held that a bankruptcy discharge of property settlement debts justifies an upward modification of alimony under state law and that this does not violate the debtor's bankruptcy discharge. Siragusa v. Siragusa, 843 P.2d 807, 812-813 (Nev. 1992); In re Siragusa, 27 F.3d 406, 408-409 (9<sup>th</sup> Cir. 1994). A Virginia state court has similarly held that when one party to a settlement agreement discharges his burdens thereunder, cause exists to rescind the agreement. Carter v. Carter, 447 S.E.2d 522 (Va. Ct. App. 1994).

This court expresses no opinion on whether Barbara Knight would be entitled to such relief. That is for the state court to determine.

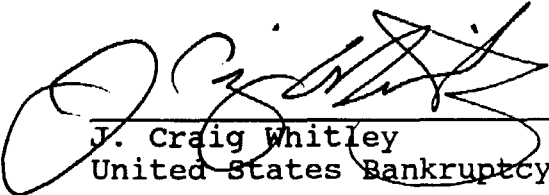
**WHEREFORE, IT IS ORDERED:**

1. Defendant's Motion for Summary Judgment is **GRANTED** as to the \$200,000.00 distributive award. This obligation is Discharged. Plaintiff's Motion in this regard is **DENIED**;

2. Plaintiff's Motion for Summary Judgment regarding the \$15,000.00 attorney's fees award is **GRANTED**. This obligation is not

discharged by the Debtor's bankruptcy. Defendant's Motion in this regard is **DENIED**.

This the 23<sup>d</sup> day of February, 1999.



J. Craig Whitley  
United States Bankruptcy Judge